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Bureau of Special Education FY'06 Memo #23

Date: April 26, 2006

To: Superintendents of Schools
Directors of Special Education

From: Lyonel B. Tracy, Commissioner

Santina Thibedeau
State Director of Special Education
Administrator, Bureau of Special Education

Re: National Instructional Materials Accessibility Standard (NIMAS)
New Assurance Required for IDEA Part B Grant

Section 612(a)(23) of the IDEA addresses access to instructional materials by individuals who are blind or have other print disabilities through the adoption of the National Instructional Materials Accessibility Standard (NIMAS) by each state. The NHDOE is required to adopt the NIMAS pursuant to Section 612(a)(23)(A). Each state must provide an assurance to the Office of Special Education Programs (OSEP) as part of the State's Part B application that students with the need for curriculum materials in alternate formats are provided with those formats in a timely manner to ensure access to the general education curriculum.

NIMAS outlines a set of consistent and valid document source files created by K-12 curriculum publishers or other content producers that will allow the creation of accessible specialized formats of print instructional materials. Curriculum materials covered by NIMAS include printed textbooks and printed core materials that are written and published primarily for use in elementary and secondary school instruction and are required by an SEA or LEA for use by students in the classroom.

Attached below please find a fact sheet on (NIMAS) prepared by OSEP. In addition, there is a NIMAS technical advice website which provides a detailed explanation of the NIMAS provision and its background. The website is www.nimas.cast.org.

In addition, the NHDOE may choose to "opt-in" or "opt-out" of the National Instructional Materials Access Center (NIMAC). NIMAC will create a national repository of NIMAS source files which may then be converted into formats that are accessible by individuals who are blind or individuals with other print disabilities. By choosing to participate in NIMAC, the NHDOE will have access to the national repository of NIMAS source files.

Each LEA also has the option of participating in NIMAC. For LEAs who choose to participate in NIMAC, contracts with publishers for textbooks and other printed core materials which are executed on and after December 3, 2006 must include a provision that will require the publisher to produce files for transmission to NIMAC. The publishers have all been involved in discussions relating to NIMAS and are well aware of the requirements. Model contract language is included at the end of this document. Access to the converted files is through an "authorized user", an agent of a coordinating agency with access to the NIMAC database and who may download NIMAS files in accordance with established agreements.

If an LEA does not participate in NIMAC, the LEA will be responsible for ensuring that each child who requires instructional materials in an alternate format will receive it in a timely manner to allow the child to participate in the curriculum. It is the recommendation of the Bureau that districts choose to participate in NIMAC: a national effort to centralize the distribution of instructional materials in alternate formats will guarantee timely provision of such materials to children.

In lieu of, or in addition to choosing to participate in NIMAC, each LEA may contract with curriculum publishers directly to purchase accessible, student-ready versions.

As part of the Part B application, the Bureau is adding an assurance dealing with the NIMAS provisions of IDEA. It is modeled after the assurance that the NHDOE is providing to OSEP on the State application for Part B. This assurance will be part of the Federal Entitlement Grant application.

If you have any questions, please contact Mary Lane at the Bureau of Special Education 271-3740.

IDEA – Reauthorized Statute
NATIONAL INSTRUCTIONAL MATERIALS
ACCESSIBILITY STANDARD
(NIMAS)

The reauthorized *Individuals with Disabilities Education Act* (IDEA) was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education, which covers a variety of high-interest topics and brings together the statutory language related to those topics to support constituents in preparing to implement the new requirements.¹ This document addresses only the changes to the provisions of IDEA regarding NIMAS that took effect on July 1, 2005. It does not address any changes that may be made by the final regulations.

IDEA 2004:

1. Adds definitions related to NIMAS.

- “NIMAS.” “NIMAS” has the meaning given the term in Section 674(e)(3)(B). NIMAS means the standard established by the secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats. [612(a)(23)(E)(ii)]
- “Specialized formats.” “Specialized formats” has the meaning given the term in Section 674(e)(3)(D), which specifies that “specialized formats” has the meaning given the term in 17 U.S.C. Section 121(d)(3) [but the term is now in Section 121(d)(4)]. “Specialized formats” means Braille, audio or digital text which is exclusively for use by blind or other persons with disabilities.... [612(a)(23)(E)(iii)]
- “Print instructional materials.” “Print instructional materials” means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a state education agency (SEA) or local education agency (LEA) for use by students in the classroom. [674(e)(3)(C)]
- “Blind or other persons with print disabilities.” “Blind or other persons with print disabilities” means children served under IDEA and who may qualify in accordance with the act entitled “An Act to provide books for the adult blind,” approved March 31, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats. [674(e)(3)(A)]
- “National Instructional Materials Access Center (NIMAC).” “NIMAC” means the center established pursuant to Section 674(e), which specifies that the secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the NIMAC not later than one year after the date of enactment of IDEA 2004. [(674(e)(1), 612(a)(23)(E)(i)]

2. Establishes the basis for adoption of NIMAS.

The state adopts NIMAS for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner after the publication of NIMAS in the *Federal Register*. [612(a)(23)(A)]

3. Mandates access to instructional materials.

- Nothing in Section 612(a)(23) shall be construed to require any state education agency (SEA) to coordinate with NIMAC. If an SEA chooses not to coordinate with NIMAC, such agency shall provide an assurance to the secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
- If an SEA chooses to coordinate with NIMAC, not later than two years after the date of enactment of IDEA 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to:

¹ Topics in this series include: Alignment With the *No Child Left Behind Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; National Instructional Materials Accessibility Standard (NIMAS); Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation and Resolution Sessions; Procedural Safeguards: Due Process Hearings; Secondary Transition; State Funding; and Statewide and Districtwide Assessments. Documents are available on the OSERS Web site at: www.ed.gov/about/offices/list/osers/index.html.

- Require the publisher to prepare, and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using NIMAS; or
- Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

[612(a)(23)(B)-(C)]

4. Mandates collaboration with assistive technology programs.

In carrying out Section 612(a)(23), the SEA, to the maximum extent possible, shall work collaboratively with the state agency responsible for assistive technology programs. [612(a)(23)(D)]

5. Establishes a deadline regarding coordination with NIMAC.

- Not later than two years after the date of the enactment of IDEA 2004, an LEA that chooses to coordinate with NIMAC, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as an SEA acquires print instructional materials under Section 612(a)(23).
- Nothing in Section 613(a)(6) shall be construed to require an LEA to coordinate with NIMAC. If an LEA chooses not to coordinate with NIMAC, the LEA shall provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

[613(a)(6)(A)-(B)]

6. Establishes the duties of NIMAC.

The duties of NIMAC are the following:

- To receive and maintain a catalog of print instructional materials prepared in NIMAS, as established by the secretary, made available to NIMAC by the textbook publishing industry, SEAs and LEAs;
- To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools in accordance with such terms and procedures as the NIMAC may prescribe; and
- To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under Sections 612(a)(23) and 613(a)(6). [674(e)(2)]

Model Contract Language:

The following may be used in contracts with publishers:

“By agreeing to deliver the materials marked with “NIMAS” on this contract or purchase order, the publisher agrees to submit a valid NIMAS file set to the NIMAC at APH. Should the vendor be a distributor of the materials and not the publisher, the distributor agrees to immediately notify the publisher of its obligation to submit NIMAS file sets of the purchased products to the NIMAC. This is page ____ of ____ of this contract or purchase order.”

For additional information about NIMAS, please refer to <http://nimas.cast.org>

For additional information about the NIMAC, please refer to <http://nimac.us>